

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Document #

21

U.S.A.

-v-

Cabrera

U.S.C.A. #

06-cr-0740

U.S.D.C. #

08-cv-5871

JUDGE:

LAK

DATE:

AUGUST 12, 2008

INDEX TO THE RECORD ON APPEAL

PREPARED BY (NAME): THOMAS R. PISARCZYK  
FIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK  
ADDRESS: 500 PEARL STREET, ROOM 370  
NEW YORK, NEW YORK 10007  
PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES -----

DOCUMENT DESCRIPTION

DOC. #

CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

*Balance of file already in USCA on review*  
\*\* ONLY CIRCLED DOCUMENTS ARE INCLUDED \*\*

\*\* ALL OTHERS MISSING AT THIS TIME \*\*

( ☒ ) Original Record

( ☐ ) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A  
for the Second Circuit on the 12<sup>TH</sup> Day of August, 2008.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

U.S.A. ,

-v-

*Cabrera*

U.S.C.A. # \_\_\_\_\_

*06cr0740*

U.S.D.C. # \_\_\_\_\_

*08cv 5871*

JUDGE: \_\_\_\_\_

*LAK*

DATE: \_\_\_\_\_

*AUGUST 12, 2008*

**Clerk's Certificate**

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through \_\_\_\_\_, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed

Document Description

**BALANCE OF FILE MISSING AT THIS TIME**

*Balance of file already in USA on  
previous Appeal*

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 12<sup>TH</sup> Day of August In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 233<sup>RD</sup> year.

**J. Michael McMahon, Clerk**

By \_\_\_\_\_

*[Signature]*  
Deputy Clerk

APPEAL, CLOSED, ECF, PRIOR

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CRIMINAL DOCKET FOR CASE #: 1:06-cr-00740-LAK-1**  
**Internal Use Only**

Case title: USA v. Cabrera

Related Case: 1:08-cv-05871-LAK

Magistrate judge case number: 1:06-mj-00886-UA

Date Filed: 08/30/2006

Date Terminated: 06/25/2007

Date Filed	#	Docket Text
06/14/2006	1	COMPLAINT as to Modesto Cabrera (1). In Violation of 18 U.S.C. 1951 and 924 (e) (1) (A) (i) (Hobbs Act Robbery and Possession of a Firearm in Relation to and in Furtherance of a Robbery Conspiracy) (Signed by Judge Frank Maas ) (dif, ) [1:06-mj-00886-UA] (Entered: 07/07/2006)
07/06/2006		Arrest of Modesto Cabrera. (dif, ) [1:06-mj-00886-UA] (Entered: 07/07/2006)
07/06/2006		Minute Entry for proceedings held before Judge Frank Maas :Initial Appearance as to Modesto Cabrera held on 7/6/2006, with CJA Attorney Xavier Donaldson by John Rodriguez with spanish intprepter and AUSA Michael English for the government. Detention on Consent w/o Prejudice; Preliminary Examination set for 7/20/2006 10:00 AM before Judge Unassigned. (dif, ) [1:06-mj-00886-UA] (Entered: 07/07/2006)
07/06/2006	4	CJA 20 as to Modesto Cabrera: Appointment of Attorney Xavier Robert Donaldson for Modesto Cabrera. (Signed by Judge Frank Maas on 7/19/06) CJA Office Mailed the Original to Attorney, and Sent Copy to File. (sac, ) [1:06-mj-00886-UA] (Entered: 07/25/2006)
08/07/2006	5	ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Modesto Cabrera. Time excluded from 8/7/06 until 9/6/06. (Signed by Judge Debra C. Freeman on 8/7/06)(ccu, ) [1:06-mj-00886-UA] (Entered: 08/08/2006)
08/30/2006		Case Designated ECF as to Modesto Cabrera.(jm, ) (Entered: 08/31/2006)
08/30/2006	6	INDICTMENT FILED as to Modesto Cabrera (1) count(s) 1, 2. (jm, ) (Entered: 08/31/2006)
09/05/2006		Minute Entry for proceedings held before Judge Lewis A. Kaplan :Pretrial Conference as to Modesto Cabrera held on 9/5/2006. Dft Modesto Cabrera pres w/atty Xavier Donaldson. AUSA Michael English pres. Crt rptpr pres. Discovery due by 9/19/2006. Motions due by 10/3/2006. Response due by 10/17/2006. Oral Argument set for 10/24/2006 04:00 PM before Judge Lewis A. Kaplan. Trial scheduled for 12/11/06. Time from today through 10/24/06 is excluded from ST calculations in the IOJ.(Court Reporter Elena Rich) (ja, ) (Entered: 09/12/2006)
10/26/2006		ORAL ORDER as to Modesto Cabrera. Dft Modesto Cabrera pres w/atty Xavier Donaldson. AUSA Michael English pres. Crt rptpr Carol Ganley pres. Any change of plea hrg is referred to the Magistrate. The trial remains scheduled for 12/11/06. Time excluded from 10/26/06 until 12/11/06 from speedy trial calculations in the IOJ. (Signed by Judge Lewis A. Kaplan on 10/26/06)(ja, ) (Entered: 10/30/2006)
12/01/2006		Minute Entry for proceedings held before Judge Lewis A. Kaplan :Pretrial Conference as to Modesto Cabrera held on 12/1/2006. Dft Modesto Cabrera present w/atty Xavier Donaldson. AUSA Michael English present. Court reporter present. Attorney Xavier Donaldson is relieved and the CJA attorney on duty is assigned to represent the deft. The deft's pro se double jeopardy motion is denied. The next conference is scheduled at 12/5/06 at 12:30 p.m. (bw, ) (Entered: 12/12/2006)
12/01/2006		ORAL ORDER as to Modesto Cabrera. Pretrial Conference set for 12/5/2006 12:30 PM before Judge Lewis A. Kaplan.(bw, ) (Entered: 12/12/2006)
12/04/2006	7	ORDER as to Modesto Cabrera. Attorney Xavier Donaldson is relieved, and CJA attorney Joyce London is appointed to represent deft Cabrera. (Signed by Judge Lewis A. Kaplan on 12/4/06)(bw, ) (Entered: 12/05/2006)
12/04/2006		Attorney update in case as to Modesto Cabrera. Attorney Xavier Robert Donaldson terminated.(bw, ) (Entered: 12/05/2006)
12/04/2006	8	CJA 20 as to Modesto Cabrera: Appointment of Attorney Joyce London for Modesto Cabrera. (Signed by Judge Lewis A. Kaplan on 12/4/06) CJA Office Mailed the Original to Attorney, and Sent Copy to File.(sac) (Entered: 01/29/2007)
12/05/2006		Minute Entry for proceedings held before Judge Lewis A. Kaplan :Pretrial Conference as to Modesto Cabrera held on 12/5/2006. Dft Modesto Cabrera present w/atty Joyce London. AUSA Michael English present. Court reporter Steve Griffing present. Trial rescheduled from 12/11/06 to 3/19/07 at 11:00 a.m. Time from today through 3/19/07 is excluded from speedy trial calculations in the interests of justice. (bw, ) (Entered: 12/12/2006)
12/05/2006		ORAL ORDER as to Modesto Cabrera. Time excluded from 12/5/06 until 3/19/07. Jury Trial set for 3/19/2007 11:00 AM before Judge Lewis A. Kaplan.(bw, ) (Entered: 12/12/2006)
02/28/2007	9	TRANSCRIPT of Proceedings as to Modesto Cabrera held on 12/5/2006 before Judge Lewis A. Kaplan. (jsa) (Entered: 02/28/2007)
03/14/2007		Minute Entry for proceedings held before Judge Andrew J. Peck :Arraignment as to Modesto Cabrera (1) Count 1,2 held on 3/14/2007. Dft present with counsel Joyce London. AUSA Michael English present. Court reporter Carol Ganly present. Spanish court staff interpreter Elena Rich present. Dft entered guilty plea to Count 1. PSI ordered. Interview to be conducted in presence of defense counsel. Sentencing set for 15-June-07 before Judge Kaplan in Room 12D at 4:00pm. Bail continued as originally set. (jw) (Entered: 03/19/2007)
03/14/2007		Minute Entry for proceedings held before Judge Andrew J. Peck : Plea entered by Modesto Cabrera (1) Guilty as to Count 1. (jw) (Entered: 03/19/2007)
03/14/2007		Order of Referral to Probation for Presentence Investigation and Report as to Modesto Cabrera (Signed by Judge Andrew J. Peck on 3/14/07)(jw) (Entered: 03/19/2007)
03/14/2007		Minute Entry for proceedings held before Judge Andrew J. Peck : as to Modesto Cabrera; Sentencing set for 6/15/2007 04:00 PM in Courtroom 12D, 500 Pearl Street, New York, NY 10007 before Judge Lewis A. Kaplan. (jw) (Entered: 03/19/2007)

03/14/2007		Minute Entry for proceedings held before Judge Andrew J. Peck :Change of Plea Hearing as to Modesto Cabrera held on 3/14/2007. Deft. pres. w/atty Joyce London; AUSA Michael English pres. Deft entered GUILTY plea to count #1. PSI ordered. Interview to be conducted in presence of defense counsel. Sentence set for 6/15/07 before Judge Kaplan in Room 12DS @ 4PM. Bail cont'd as originally set. (Court Reporter Carol Ganley, interpreter Elana Rich) (pr) (Entered: 03/26/2007)
03/14/2007		Change of Not Guilty Plea to Guilty Plea as to Modesto Cabrera (1) Count 1. (pr) (Entered: 03/26/2007)
03/14/2007		Minute Entry for proceedings held before Judge Andrew J. Peck : Plea entered by Modesto Cabrera (1) Guilty as to Count 1. (pr) (Entered: 03/26/2007)
03/14/2007		ORAL ORDER as to Modesto Cabrera, Order of Referral to Probation for Presentence Investigation and Report as to Modesto Cabrera, Sentencing set for 6/7/2007 04:00 PM before Judge Lewis A. Kaplan.. (by Judge Andrew J. Peck on 3/14/07)(pr) (Entered: 03/26/2007)
04/24/2007	10	TRANSCRIPT of Proceedings as to Modesto Cabrera held on 3/15/2007 before Judge Andrew J. Peck. (jp) (Entered: 04/24/2007)
06/13/2007	11	ORDER as to Modesto Cabrera. It is HEREBY ORDERED that the deft's guilty plea is accepted. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 6/13/07)(jw) (Entered: 06/14/2007)
06/18/2007		Minute Entry for proceedings held before Judge Lewis A. Kaplan :Sentencing held on 6/18/2007 for Modesto Cabrera (1) Count 1. (jw) (Entered: 06/26/2007)
06/25/2007		DISMISSAL OF COUNTS on Government Motion as to Modesto Cabrera (1) Count 2. (jw) (Entered: 06/26/2007)
06/25/2007	12	FILED JUDGMENT IN A CRIMINAL CASE as to Modesto Cabrera (1), Pleaded guilty to Count(s) 1, Imprisonment for a total term of 67 months. Supervised release for a term of 3 Years.; Count(s) 2, All open counts are dismissed on the motion of the US. The deft is remanded to the custody of the US Marshal. If the deft is removed or deported from the US, he shall not reenter the US illegally. The deft shall provide the probation officer with any financial information he or she may request. The deft shall follow all directions of the Bureau of Citizenship and Immigration Services in any proceedings it may institute. Special Assessment of \$100 which is due immediately. (Signed by Judge Lewis A. Kaplan on 6/25/07)(jw) (Entered: 06/26/2007)
06/26/2007		Judgment entered in money judgment book as #07,1309 as to Modesto Cabrera in the amount of \$ 100.00, re: 12 Judgment. (dt) (Entered: 07/12/2007)
06/28/2007	13	NOTICE OF APPEAL by Modesto Cabrera from 12 Judgment. Copies sent to A.U.S.A.(tp) (Entered: 07/03/2007)
06/28/2007		Appeal Remark as to Modesto Cabrera re: 13 Notice of Appeal - Final Judgment. NO FEE, CJA. (tp) (Entered: 07/03/2007)
06/29/2007	14	NOTICE of Appeal as to Modesto Cabrera (ja) (Entered: 07/03/2007)
07/03/2007		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Modesto Cabrera to US Court of Appeals re: 13 Notice of Appeal - Final Judgment. (tp) (Entered: 07/03/2007)
07/12/2007	15	TRANSCRIPT of Proceedings as to Modesto Cabrera held on 6/18/07 before Judge Lewis A. Kaplan. (jbc) (Entered: 07/12/2007)
07/12/2007		USCA SCHEDULING ORDER as to Modesto Cabrera related to 13 Notice of Appeal - Final Judgment filed by Modesto Cabrera, USCA Case Number 07-2888-cr. Defendant Brief due by 8/29/2007. Government Brief due by 9/28/2007. Appeal Record due by 7/30/2007. (nd) (Entered: 07/12/2007)
07/31/2007	16	Appeal Record Sent to USCA (Index). Notice that the Original index to the record on Appeal as to Modesto Cabrera re: 13 Notice of Appeal - Final Judgment USCA Case Number 07-2888-cr, 3 Copies of the index, Certified Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (ud) Additional attachment(s) added on 8/6/2007 (Dulal, Nezam). (Entered: 08/01/2007)
09/07/2007		Appeal Record Sent to USCA (File). Indexed record on Appeal as to Modesto Cabrera re: 13 Notice of Appeal - Final Judgment USCA Case Number 07-2888-cr, were transmitted to the U.S. Court of Appeals on 9/7/2007 to the attention of T. Sula. (nd) (Entered: 09/07/2007)
06/18/2008	17	MANDATE of USCA (certified copy) as to Modesto Cabrera re: 13 Notice of Appeal - Final Judgment. USCA Case Number 07-2888-cr. The Govt moves to dismiss this appeal as barred by the waiver of appellate rights contained in Appellant's plea agreement. Upon due consideration, it is hereby ORDERED that the motion is GRANTED and the appeal is DISMISSED. Appellant has not demonstrated that the waiver of his appellate rights is unenforceable under U.S. v. Gomez-Perez, 215 F.3d 315, 319 (2d Cir. 2000). Catherine O'Hagan Wolfe, Clerk USCA. Issued As Mandate: 6/13/08. (bw) (Entered: 06/23/2008)
06/18/2008		Transmission of USCA Mandate/Order to the District Judge (Kaplan, J.) on 6/23/08 re: 17 USCA Mandate - Final Judgment Appeal. (bw) (Entered: 06/23/2008)
06/30/2008		MOTION to Vacate under 28 U.S.C. 2255 Document filed by Modesto Cabrera. (jeh) Civil case 1:08-cv-5871 opened. (Entered: 07/03/2008)
07/15/2008	18	ORDER denying Motion to Vacate (2255) Modesto Cabrera (1) Count 1,2 as to Modesto Cabrera. For the foregoing reasons, the motion pursuant to 28 USC 2255 is denied. A certificate of appealability is denied, and the Court certifies that any appeal herefrom would not be taken in good faith within the meaning of 28 USC 1915(a)(3). SO ORDERED. Refer to 08 civ 5871 (LAK) (Signed by Judge Lewis A. Kaplan on 7/15/08) (jw) (Entered: 07/15/2008)
07/25/2008	20	NOTICE OF APPEAL by Modesto Cabrera from 18 Order on Motion to Vacate (2255). Copies sent to attorney(s) of record: A.U.S.A. (tp) (Entered: 08/11/2008)
07/25/2008		Appeal Remark as to Modesto Cabrera re: 20 Notice of Appeal. \$455.00 APPEAL FEE DUE. COA DENIED 7/15/08.(tp) (Entered: 08/11/2008)
07/28/2008	19	ENDORSED LETTER as to Modesto Cabrera addressed to Judge Kaplan from Modesto Cabrera dated 7/25/08 re: Notice of Appeal and Application for Certificate of Appealability on Appeal pursuant to 28 USC 2253(c)(1)(2)...ENDORSEMENT...A certificate of appealability was denied by order dated 7/15/08. (Signed by Judge Lewis A. Kaplan on 7/28/08)(jw) (Entered: 07/28/2008)
08/11/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Modesto Cabrera to US Court of Appeals re: 20 Notice of Appeal.(tp) (Entered: 08/11/2008)

2255, APPEAL, CLOSED, PRO-SE

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-05871-LAK**  
**Internal Use Only**

Cabrera v. USA

Assigned to: Judge Lewis A. Kaplan

Related Case: 1:06-cr-00740-LAK-1

Cause: 28:2255 Motion to Vacate / Correct Illegal Sentence

Date Filed: 06/30/2008

Date Terminated: 07/15/2008

Jury Demand: None

Nature of Suit: 510 Prisoner: Vacate Sentence

Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
06/30/2008	1	MOTION to Vacate, Set Aside or Correct Sentence (28 U.S.C. 2255). NO FURTHER ENTRIES. PLEASE SEE CRIMINAL CASE: 06-cr-740 (IAK). Document filed by Modesto Cabrera.(mbe) (Entered: 07/03/2008)
06/30/2008		Magistrate Judge Debra C. Freeman is so designated. (mbe) (Entered: 07/03/2008)
07/15/2008	2	ORDER: The motion pursuant to 28 U.S.C. 2255 denied. A certificate of appealability is denied, and the Court certifies that any appeal herefrom would not be taken in good faith within the meaning of 28 U.S.C. 1915(a)(3). (Signed by Judge Lewis A. Kaplan on 7/15/08) Copies Mailed By Chambers. (tro) (Entered: 07/15/2008)
07/25/2008		NOTICE OF APPEAL from 2 Order of Dismissal. Document filed by Modesto Cabrera. Copies sent to attorney(s) of record: A.U.S.A. (ORIGINAL DOCUMENT ENTERED IN CRIMINAL CASE #06-cr-0740, DOC. #20.) (tp) (Entered: 08/11/2008)
07/25/2008		Appeal Remark as to Notice of Appeal filed by Modesto Cabrera. \$455.00 APPEAL FEE DUE. COA DENIED 7/15/08. (tp) (Entered: 08/11/2008)
07/28/2008	3	MEMO ENDORSEMENT on NOTICE OF APPEAL AND APPLICATION FOR CERTIFICATE OF APPEALABILITY ON APPEAL PURSUANT TO 28 U.S.C. 2253(c)(1)(2). ENDORSEMENT: A certificate of appealability was denied by order dated 7/15/08. (Signed by Judge Lewis A. Kaplan on 7/28/08) (tro) (Entered: 07/28/2008)
08/11/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp) (Entered: 08/11/2008)
08/11/2008		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp) (Entered: 08/11/2008)